

03-1238 IBP, INC. V. ALVAREZ, ET AL.

DECISION BELOW: 339 F.3d 894 (9th Cir. 2003)

QUESTIONS PRESENTED

(1) Whether walking that occurs between compensable clothes-changing time and the time employees arrive at or depart from their actual work stations constitutes non-compensable "walking . . . to and from the actual place of performance of the principal activity" within the meaning of Section 4(a).

~~(2) Whether, after *United States v. Mead*, 533 U.S. 218 (2001), deference is due the Department of Labor's interpretation of the term "clothes" in Section 3(o), when that interpretation is embodied in an opinion letter issued by the Administrator of the Department's Wage and Hour Division, who is charged with administering and enforcing the FLSA, when Congress has provided that third parties may rely on such opinion letters, and when the opinion letter itself restores the agency's prior position?~~

Cert. Granted 2/22/05

Limited to Question 1 presented by the petition.

Consolidated with 04-66 for one hour of oral argument.

04-66 TUM, ET AL. V. BARBER FOODS, INC.

DECISION BELOW: 360 F.3d 184 (1st Cir. 2004)

QUESTIONS PRESENTED

1. Is time employees must spend walking to and from stations where required safety equipment is distributed compensable under the Fair Labor Standards Act, as amended by the Portal-to-Portal Act? 29 U.S.C. 216(b), 254(a). (This is the first question presented by No. 03-1238, *IBP, Inc. v. Alvarez*.)

~~2. Do employees have a right to compensation for time they must spend waiting at required safety equipment distribution stations, and for time spent donning and doffing equipment that is necessitated by the employees' working conditions but not expressly required by the employer or by law?~~

~~3. Is this walking and waiting time rendered non-compensable merely because the associated compensable donning or doffing time is de minimis in isolation, even if the aggregate waiting, walking, donning, and doffing period is not de minimis?~~

Cert. Granted 2/22/05

Limited to Question 1 presented by the petition and the following question:

2. Do employees have a right to compensation for time they must spend waiting at required safety equipment distribution stations?

Consolidated with 04-1238 for one hour of oral argument.